

Codington County Planning Commission/Board of Adjustment Minutes

February 27, 2018

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on February 27, 2018 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Bob Fox, Myron Johnson, Charles Rossow, Brenda Hanten, Mel Ries, Mark O'Neill, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were Gerald Peltier, James Steiger, Diane Steiger, Larry Schmeling, Linda Schmeling, Kay Suttin, Rose Hjermsstad, Elmer Kruger, and Becky Goens.

Chairman Fox brought the meeting of the Board of Adjustment to order at 12:30 pm.

Motion by Hanten, second by Johnson, to approve the January 16, 2018 meeting minutes. Motion passed unanimously.

Motion by O'Neill, second by Ries, to approve the Lot Size variance request by Brock and Jenny Kuhnert on their property located in W145' N300' NE1/4, Section 36-T116N-R51W. Muller reviewed property history per Staff Report (attached). Kuhnert's were made aware of the lack of building rights on this property when they attempted to obtain a building permit for a storage shed. Adjoining landowner, DuWayne Mack, supports this variance request. Mr. Kuhnert would like to see something in place that would require a buyer to be advised when purchasing property when there are no building rights available. Motion failed unanimously based upon findings presented at meeting.

Motion by Hanten, second by Ries, to approve the Lot Width and Existing Farmstead Exemption variance requests made by MoDak Dairy for property located in E610' S730' SE1/4 less Lot H-3, Section 32-T117N-R51W. MoDak Dairy would like to retain residential building rights on this property as it does contain a residence. Muller reviewed Staff Report (attached). Muller did advise the Moes family that the existing buildings are too close to the road and if/when they are destroyed or replaced, they must be constructed to comply with ordinance setback requirements. Motion passed unanimously based upon findings presented at meeting.

Motion by Johnson, second by Rossow, to approve the Conditional Use Permit request for a temporary roadside stand utilizing a permanent structure for sales of fireworks subject to the following conditions:

- A. The applicant is required to meet all State laws regarding location and operation of fireworks stand (separation from other structures, hours of operation, etc).
- B. The applicant may be required to present the Zoning Officer with a copy of the State Permit from the State Fire Marshall's Office prior to opening for sales for any specific season.

- C. Sales shall occur no closer than 65' to the public right-of-way.
- D. No parking shall be allowed in the public right-of-way.
- E. Separate conditional use permit(s) are required for any off-premise advertising associated with the business.
- F. Total on-premise signage shall not exceed eighty (80) square feet.
- G. The conditional Use is valid only for the dates of June 27 through July 5, 2018.
- H. All signs are to be removed on or before July 12, 2018.
- I. This conditional use permit expires on July 12, 2018. Following application, the Board of Adjustment may authorize future permits on this property after a review of the application and any complaints regarding sale from this or past seasons.
- J. If there are documented complaints, the applicant may be required to close the business.
- K. The applicant further agrees that if any terms of this agreement are not complied with, the applicant shall forfeit his/her claim to a Conditional Use permit.

Property is located in S771' of N1205' of W732' in N1/2 of NW1/4, Section 5-T117N-R52W. Muller reviewed Staff Report (attached). This will be the second year the applicant has operated at this site. Motion passed unanimously. Chairman Fox read the Findings of Fact. There were no objections or questions.

Motion by Johnson, second by Ries, to approve the Front Yard Setback variance request made by DeBerg Farms, Inc. Property is located in SE1/4, Section 6-T116N-R54W. DeBerg's would like to establish a setback line on the western portion of the farm yard. Muller reviewed Staff Report (attached). Motion by Johnson, second by O'Neill, to include the condition that the setback coordinates be recorded at the Register of Deeds Office. Motion on the amendment passed unanimously. Motion on the variance, with the amendment, passed unanimously based upon findings presented at meeting.

Motion by Johnson, second by Ries, to approve the Conditional Use Permit request for Brent Zemlicka to operate a Class 3 Concentrated Animal Feeding Operation (CAFO) subject to conditions as indicated by staff. Property is owned by Rodney Zemlicka and located in NW1/4, Section 4-T118N-R52W. Zemlicka seeks to construct a 2,400 head finisher swine facility. Muller reviewed *Specifics of Request* per the Staff Report (attached). Maps of the aquifer districts were displayed for the public to view. Staff reviewed *Ordinance and Comprehensive Land Use Plan* per the Staff Report (attached).

If approved, the staff recommends, at a minimum, the following conditions:

1. The proposed barn will be constructed to provide manure containment for 2,400 finisher swine (960 animal units).

2. The applicant shall make application for a "Certificate of Compliance" from SDDENR prior to the issuance of any building permit(s) for the proposed site. The applicant shall not stock the site until providing documentation to the office of receipt of a Certificate of Compliance and/or demonstrating that any changes required as a result of the Certificate of Compliance have been implemented.
3. The applicant agrees to comply with the submitted nutrient management plan, fly and odor management plan, and manure management plan.
4. Applicant shall provide updated information regarding fields included in the nutrient management plans upon request by the Zoning Officer.
5. This Conditional Use Permit authorizes the use of this property for a Concentrated Animal Feeding Operation (nursery and feeder swine) consisting of 960 animal units. Any expansion beyond 960 animal units will require a new conditional use permit and the review of the site by SDDENR for compliance with the State General Permit requirements.
6. Haul road agreements with Germantown Township shall be approved for the use of 160th Street primary haul routes. Unless otherwise agreed to between the township and the applicant, Codrington County requires the Grantor to abide by the following terms to be included in the Agreements:
 - a. Unless otherwise agreed upon between the grantor and Germantown Townships, the grantor shall be responsible for any costs associated with extraordinary maintenance and graveling on the portion of 160th Street used for the hauling of manure, feed, etc. for the operation, which are hereby designated as the primary haul roads, and
 - b. Unless otherwise agreed upon between the grantor Germantown Township, all road work whether customary or extraordinary shall be done under the authority and supervision of the Township and meet its specifications. The work shall be done through the applicable contractor unless the Grantor receives prior authorization from the applicable road authority to conduct its own repairs or maintenance.
 - c. Germantown Township shall be responsible for all ordinary snow removal on 160th Street on the same basis as provided to the remainder of the Township. Any additional snow removal deemed necessary for the Grantor to continue its operations is hereby authorized to be done at Grantor's expense.
 - d. The Grantor acknowledges that, to the extent already provided for by the law, and further acknowledges that it shall be responsible for any and all damages

to applicable road authority roads or road right-of-ways due to the result of the Grantor's operations (i.e. Delivery of feed, silage chopping or manure disposal). Work will be done on the same basis as specified hereinabove. However, no unique standard or obligation not otherwise provided for by law is created by this acknowledgment.

- e. The Grantor may have an Agreement with a contractor for cutting silage or forage, or for hauling manure and shall notify the Township in advance of manure hauling or chopping by listing the roads that will be traveled.
 - f. Unless otherwise agreed upon by the applicable road authority, the applicant shall notify and/or obtain any appropriate licenses prior to the laying of any pipes intended to transport liquid manure within the applicable right-of-way.
 - g. The Township and applicant may review and assign new haul routes on an annual basis.
7. In the event the haul road agreements hereinbefore described are not executed, the grantor, his heirs, assigns or successors in interest of the Grantor agree that all of the terms and conditions of Item "6" are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of Item "6".
8. The Grantor shall comply with established minimum manure application setbacks when spreading manure generated from the CAFO.
9. The conditional use shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are adhered to.
10. The Conditional Use Permit is transferable. Subsequent owners/operators will be required to agree to the terms of this permit.
11. If there are 1) Violations of the Conditional Use Permit or other Codington County Zoning regulations or 2) Failure of the manure containment system, the applicant may be required to forfeit the Conditional Use Permit.
12. Violation of the terms of this conditional use permit will be determined by the Codington County Zoning Officer.
- (1) The first violation substantiated by the Zoning Officer of this conditional use permit may result in a notification letter stating the violation and a prescribed period of time to remove the violation. A second violation occurring within one calendar year of the previous violation may result in a review of the validity of

the conditional use permit and potential revocation of said permit. A third violation within one calendar year of the initial violation may result in revocation of the conditional use permit and cessation of all feeder operations within forty-five days (45) of notice of revocation.

(2) The applicant may make appeal from the decision of the Zoning Officer or other agent of the Codington County Board of Adjustment to the Codington County Board of Adjustment. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Board of Adjustment shall be taken to Circuit Court.

(3) Failure to comply with the decision of the Zoning Officer or other agent of the Codington County Board of Adjustment may be deemed a separate violation.

13. All of the terms and conditions herein shall extend to and be binding upon the heirs, assigns, or successors in interest of the Grantor, and are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement which shall, upon its execution, be recorded with the Codington County Register of Deeds Office.

Brent Zemlicka indicated his family would like to diversity their operation which includes this expansion. The barn would be tunnel-vented. Well water will be used. Jim Beskow, adjacent landowner, has concerns about odor, proximity of established residences, property value, and water supply. Kenneth Bunde, Germantown Township supervisor, would like to have had the possibility of meeting with the applicant to begin preparing a Haul Road Agreement and road maintenance agreement prior to this hearing. Larin Bunde, adjoining landowner, clarified the location and inquired if this operation could be built on Aquifer Protection Zones B or C. Rodney Zemlicka addressed road concerns with regard to hauling of corn and silage on these roads as well that are never addressed with Haul Road Agreements. Merlin Bunde asked how odor and air quality is monitored. No one else requested to speak; public portion of the hearing was closed. Brian Friedrichsen of Dakota Environmental addressed the board regarding ground water supply and indicated research determines the aquifer in question is not present at the barn site and therefore would have to withdraw from a separate aquifer than Beskow's. Water use estimation based on the number of head would be half of what a DENR water rights permit

would require. Mr. Friedrichsen passed around an evaluation using the odor footprint tool from SDSU. This figures the type of storage, type of building, number of head, admitting area, and generates a radius from around the source at which an annoying odor can be noticed. The areas determined on the model indicate 97% annoyance free within the range specified. Regarding odor, Chairman Fox indicated that many farmers raise livestock and were not burdened with hiring engineers and environmental studies. If those farmers want to expand your livestock operation, they will be required to do so. Chairman Fox indicated there will be a slight odor in all areas of the county as that is where livestock is raised. Friedrichsen has worked with a bacteriological additive that is used in the pits or directly in the feed to increase digestion of the solids in the manure to reduce odor. Brent indicated other sections were researched but could not be used because of aquifer location, too far for manure pumping, or too close to a town. Soils tests indicate that with this size of barn, the existing quarter in which the barn is located may handle most of the manure application. Deep pit barns consist of concrete designed to DENR code and monitoring/inspections will occur during construction. Barn washing will consist of pressure washing. It is estimated that during the construction phase, concrete will be limited to two to three flurries of activity for the floor, walls, and upper stem walls. It is estimated 3-5 days of activity for the concrete trucks. Johnson reiterated that Codington County is designated as a Land Use for agricultural purposes and discussions are centered on what is best for agriculture in our county. We (the board) need to encourage and get behind our young people that are looking to expand in the agriculture industry. Motion by Rossow, second by Hanten, to include the condition that the Haul Road Agreement must be in writing, in 30 days, and submitted to the Zoning Officer prior to issuing a permit. If not submitted within 30 days, the board will review this requirement at its immediately subsequent meeting. Grain trucks are also using these roads throughout the year without any Haul Road Agreements in place. Permits are not required for these operations either. Motion on amendment passed 5-1. Chairman Fox read the Findings of Fact. Main motion passed unanimously.

Motion by Hanten, second by Ries, to adjourn the Board of Adjustment meeting.

Chairman Fox brought the meeting of the Planning Commission to order.

Muller presented the Plat of Czech Third Addition in the NE1/4 of Section 15-T116N-R52W. Property owners are Marvin and Maxine Czech. Motion to approve by Rossow, second by Ries. Motion passed unanimously.

Motion by O'Neill, second by Ries, to approve the Plat of James and Marlys Mercie Addition in the NE1/4 of Section 15-T116N-R52W. Property owners are James and Marlys Mercie. Motion passed unanimously.

Motion by O'Neill, second by Ries, to recommend approval of Ordinance #67,

Administrative. The ordinance draft found online had some conversion issues making it difficult to read or follow the proposed changes and amendments. Public notices and availability have met all state guidelines in publishing; however, it is recommended a corrected conversion copy be placed online for public review which should result in a delay in recommending approval today. Motion by Rossow, second by Ries, to postpone action on this ordinance until the next regularly scheduled meeting of March 19, 2018 at 12:30 pm. Motion passed unanimously.

It was decided the next meeting of the wind energy ordinance work session would be Monday, March 12, 2018 at 6:00 pm. Interested parties will be notified and the website will be updated accordingly.

A complaint was received by a deputy regarding a kennel in which a permit had been issued. This individual will be represented by an attorney. She is currently permitted for 12 adult dogs and it was the deputy's recommendation the permit be decreased to allow three (3). A permit revocation meeting will be forthcoming.

Motion to adjourn by Johnson, second by Hanten. Motion passed unanimously. Meeting adjourned at 3:29 p.m.

Respectfully Submitted,

Becky Goens, Secretary

**FEBRUARY 2018
CODINGTON COUNTY PLANNING COMMISSION/BOARD OF ADJUSTMENT
STAFF REPORT**

TUESDAY – FEBRUARY 27, 2018 – 12:30 p.m.

CODINGTON COUNTY BOARD OF ADJUSTMENT

ITEM #1 VARIANCE)

Applicant: Brock and Jenny Kuhnert

Property Description: W145' N300' NE1/4, Section 36-T116N-R51W, Codington County, South Dakota. (Kranzburg (S) Township)

Action Item – Variance – Minimum Lot Area (3.04.03.1)

Zoning Designation: Agricultural

Request: Mr. and Mrs. Kuhnert request variance to obtain building rights on their 1 acre parcel.

History/Issue(s):

Relevant Property History:

1. In July of 2002 the Codington County Zoning Officer issued Penny Krause a building permit to construct a house (#1939) on an 80-acre portion of the NE1/4 of this section.
2. Mr. and Mrs. Kuhnert purchased one (1) acre of the above property from Duane Krause in 2015. The remaining 79 acres had already been sold to an area farmer.
3. Though the property has always been farmed, there is no “Existing Farmstead” as defined by the ordinance located on this legally described piece of property.
4. The Kuhnert’s were not made aware of the ramifications of purchasing a lot with less than 35 acres and a house at the time of purchasing the property by the seller or their real-estate agents.

Ordinance regarding this request:

1. As has been the case since 1976, there are no building rights to parcels with less than 35-acres. Therefore if the home was destroyed by an act of God, etc – no building permit could be issued to replace the home. Further no permits could be issued for construction of accessory buildings without the granting of variance for this site.
2. By ordinance if the above legal description were decreased in size below 35 acres, the zoning officer could not issue ANY building permits to the newly created lot without a variance to the minimum lot area; however

Abridged Variance History:

1. The Board has allowed variances from the 35 acre requirement in the following instances:
 - a. A lot of 5 acres is created at the site of an existing farmstead or if a second house on the farmstead is to be occupied by employees or relatives of the farm owner.
 - b. The lot contains a nonconforming lot of record created prior to the adoption of the 35 acre rule.
 - c. A past zoning officer issued a building permit to a lot of less than 35 acres and no record of subsequent correspondence from the zoning office is available (building permits, inquiries, Board of Adjustment decisions, etc).

2. This property is not at the site of an existing farmstead.
3. The Board has a history of denying variances to the minimum 35 acre lot requirement where a tract of 35 acres is proposed to be split or has already been split if the split occurred after 1976 regardless of previous permits or approval by the zoning officer in some cases. (Since 2004: Spiegel '04, Manzey '04, Stadheim '06, Smith' 06, Krause '06, Brandriet '06, Wittnebel ('06 and '09), Lueck '07, Steen '09, Laqua '11, Peters/Schreiner '13, Schaefer '13, Schaefer '14, Brandriet '15, Schwanke '16).

Staff recommendation:

Variance to Minimum Lot Area and Minimum Lot Width- Using one motion, based upon past decisions of the Board of Adjustment, the Zoning Officer is obligated to recommend denial of the variances based upon:

- i. The Board has allowed variances from the 35 acre requirement in the following instances:
 - a. A lot of 5 acres is created at the site of an existing farmstead or if a second house on the farmstead is to be occupied by employees or relatives of the farm owner.
 - b. The lot contains a nonconforming lot of record created prior to the adoption of the 35 acre rule.
 - c. A past zoning officer issued a building permit to a lot of less than 35 acres and no record of subsequent correspondence from the zoning office is available (building permits, inquiries, Board of Adjustment decisions, etc).
- ii. The property was under contiguous ownership of greater than 35 acres when Building Permit #1939 for the existing house was issued for a house which satisfied the minimum lot requirement of the Codington County Zoning Ordinance.
- iii. The Board of Adjustment has denied multiple variance requests to create lots of less than 35 acres.
- iv. Granting of this variance would authorize the creation of a nonconforming lot.
- v. Granting of this variance **would** confer upon this applicant privileges not commonly enjoyed by other residents in the Agricultural District.

ITEM #2 (2) VARIANCES

Applicant/Owner: MoDak Dairy

Property Description: E610' S730' SE1/4 less Lot H-3, Section 32-T117N-R51W, Codington County, South Dakota. (Kranzburg (N) Township)

Action Items – Variances – Minimum lot size/Existing farmstead exemption (3.04.03.7.b), minimum lot width (3.04.03.2).

Zoning Designation: Agricultural

Request: The applicant seeks variances from the minimum lot width, minimum lot area (by virtue of existing farmstead exemption), to retain building rights on property with an existing farmstead.

History/Issue(s):

1. This property was split off from the remainder of the quarter section prior to 2004 and has been lived in by Mitchell Kallhoff (most recently); but no building permits have been necessary

2. MoDak recently purchased this property. There is no intention at this point to apply for any building permits, but if they would need one; it could not be issued without a farmstead exemption variance.
3. The property was used as a base for farming operations prior to 1976 and is still in use.
4. Codington County's Zoning Ordinance does allow for variance from the 35 acre-minimum lot requirement if the lot is determined to be an existing farmstead which contains at least five acres and thereby affording building rights.
5. The parcel contains an existing farmstead as defined by the Codington County Zoning Ordinance.
6. Further, the Board has not required platting of existing farmsteads on sites legally described prior to 2004.
7. Staff recommendation **(Variance) –Existing Farmstead Exemption and variance to Minimum Lot Width-** Approve request because 1) The lot does contain at least five acres which meets the terms of the Ordinance. 2) The Zoning Officer after review of records and site-visit has determined that this parcel was used as an existing farmstead/residential site prior to October 26, 1976. The land use plan authorizes the Board to grant the variance without being platted since the property was split prior to 2004.

ITEM #3 CONDITIONAL USE

Owner/Applicant: Thor and Darcy Thonvold

Property Description S771' of N1205' of W732' in N1/2 of NW1/4, Section 5-T117N-R52W, Codington County, South Dakota. (Rauville Township)

Action Items – Conditional Use Permit – (3.04.02.37)

Zoning Designation: A – Agricultural District

Request: The Thonvold's seek to sell fireworks out of a permanent structure.

History/Issue(s):

Regarding the Conditional Use:

Specifics of this request:

1. The Thonvold's seek to sell fireworks out of a tent on the above described property.
2. The Thonvolds sold fireworks in Rauville under permit issued to Kaboomers for the several years out of a temporary structure, until getting permit last year to sell at their residence on this property.
3. Codington County has received no complaints regarding the sale of fireworks in Rauville, nor last year on this property.
4. Last year they sold out of a tent; this year they propose to sell out of an existing structure on the property.
5. Adequate parking and loading will be provided for the fireworks sales site.
6. The Thonvold's/Kaboomers will obtain a license for retail sale of fireworks from the state.

Ordinance, Comprehensive Land Use Plan and other regulations regarding this request:

1. Permanent stands for the sale of fireworks are allowed by conditional use.
2. Aside from the general requirements of Section 4.05.01.6.a-f., no specific standards are listed in the zoning ordinance for fireworks sales.
3. The Comprehensive Land Use Plan lists the following considerations in issuing a permit for all fireworks sales:
 - a. Fireworks sales and storage operations are required to meet all applicable state and federal regulations regarding the sale and storage of fireworks.

- b. Applicants for sale of fireworks shall obtain a State Permit from the South Dakota State Fire Marshall's Office prior to the sale of fireworks.
 - c. Codington County shall review and require precautions be taken for the safety of patrons, employees and adjacent land uses.
 - d. Permits for the sale of fireworks shall be specific to the season applied for and expire or be suspended until the next permitted season.
 - e. Fireworks sales are required to be situated with access to a county road, paved road, or Board of Adjustment approved privately maintained road.
 - f. On-site parking and loading will vary upon the size of the operation and may require site specific consideration.
 - g. Entrance and exit to and from the site will be achieved in a forward gear.
 - h. Storage of fireworks may be required to be screened from adjacent landowners and/or rights-of-way.
4. The Board has historically added conditions specifying sign area and duration, compliance with state law, duration of sales, expiration/re-application of permit, parking, and loading requirements.
5. As of the date of this report staff has received no objections regarding this request.

Staff recommendation:

Conditional Use Permit: Temporary Roadside Stand for sale of Fireworks. The Board may table the request, deny the request or approve the request. If approved, the staff recommends, at a minimum, the following conditions:

- L. The applicant is required to meet all State laws regarding location and operation of fireworks stand (separation from other structures, hours of operation, etc).
- M. The applicant may be required to present the Zoning Officer with a copy of the State Permit from the State Fire Marshall's Office prior to opening for sales for any specific season.
- N. Sales shall occur no closer than 65' to the public right-of-way.
- O. No parking shall be allowed in the public right-of-way.
- P. Separate conditional use permit(s) are required for any off-premise advertising associated with the business.
- Q. Total on-premise signage shall not exceed eighty (80) square feet.
- R. The conditional Use is valid only for the dates of June 27 through July 5, 2018.
- S. All signs are to be removed on or before July 12, 2018.
- T. This conditional use permit expires on July 12, 2018. Following application, the Board of Adjustment may authorize future permits on this property after a review of the application and any complaints regarding sale from this or past seasons.
- U. If there are documented complaints, the applicant may be required to close the business.
- V. The applicant further agrees that if any terms of this agreement are not complied with, the applicant shall forfeit his/her claim to a Conditional Use permit.

ITEM #4 (VARIANCE)

Applicant/Owner: Troy DeBerg/Richard DeBerg

Property Description: SE1/4, Section 6-T116N-R54W, Codington County, South Dakota. (Kampeska Township)

Action Item: Variance – Minimum Required Front Yard Setback (3.04.03.3)

Zoning Designation: A – Agricultural

Request: Mr. DeBerg seeks to establish a front yard setback for his property.

History/Issue(s):

1. Richard DeBerg owns and farms at the above property. (Granted CAFO permit by the Board of Adjustment.)
2. The request is to establish a setback line on the western portion of the farm yard. (Between the existing grain bins (128' from the center of the road) and a shed to the west (101' from the center of the road.) DeBerg's request to build structures (up to 3 grain bins) not closer than a diagonal line extended between the two buildings.
3. Recently information has come available to the zoning office to indicate the right-of-way line is farther north than previously thought.
4. In conjunction with past HWY 212 improvement projects additional right-of-way has been purchased. The right-of-way does not run parallel to the section line in this stretch because the highway was moved from its original location. As a result several buildings are nonconforming, despite being "in-line" with other conforming buildings on the same lot.
5. The applicant and SDDOT are confident that the west shed is not located in the right-of-way but DOT has not been able to identify the location of the right-of-way in this stretch of property because the highway is not centered on the section line.
6. SDDOT does not object to the request.

Staff Summary and Recommendation:

Since this request truly is unique based upon the history of the property, staff recommends approval of the motion to establish the setback diagonally between the southernmost portion of the grain bin (pictured below) and the southeast corner of the shed. Latitude and longitude will be established using GPS to establish the boundary. This action does not change the required setback for the rest of the property. The Board may (by amendment) choose a different location on the below figure to use to establish the setback if not the points described above.



Staff recommendation – Variance – **Front yard setback** - Staff recommends approval of the request based upon the following findings:

- a. SDDOT does not object to the establishment of the setback.
- b. The proposed setback is farther from the right-of-way than many other structures on the same property.
- c. The change in highway right-of-way makes it difficult to identify the location of the right-of-way.
- d. The change of the location of the highway itself and angle of the highway make it difficult to establish the edge of the property.
- e. The board grants the variance due to the uniqueness of the request, and would only consider variances under similar situations.

ITEM #5 CONDITIONAL USE PERMIT

Applicant: Brent Zemlicka / Owner: Rodney Zemlicka

Property Description: NW1/4, Section 4-T118N-R52W, Codington County, South Dakota. (Rauville Township)

Action Items: Conditional Use - Class 3 CAFO (3.04.03.8)

Zoning Designation: A - Agricultural

Request: Mr. Zemlicka seeks to construct a 2,400 head finisher swine facility.

History/Issue(s):

Specifics of Request:

1. Mr. Zemlicka proposes to operate a Concentrated Animal Feeding Operation on the above described property owned by his father.
2. Portions of the property are located over Zones B and C of the Aquifer Protection District, however no aspect of this operation are proposed over the shallow aquifer. Mr. Zemlicka performed soil borings to verify this.
3. The site will be constructed for 2,400 finisher swine (960) animal units in a slatted/deep pit barn. The barn will be 102' x 193'.
4. He is working with an engineering firm to help prepare the application, in anticipation of the Board requiring a "certificate of compliance" from DENR based on the size of the operation.
5. Rodney Zemlicka, Brent's father, operates a grandfathered CAFO over Zone A of the aquifer protection district. Initially it was the intent of the Zemlicka's to add this barn at the farm, but they were told it was prohibited by ordinance.
6. The primary haul route is intended to be 160th Street (Rauville and Germantown) a township road.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. The Comprehensive land use plan lists numerous considerations for CAFO's on pages 59-60, all of which are addressed in the zoning ordinance (see below).
2. The request is to construct a new facility with numbers described above
3. No portion of the animal feeding operation is located over the Aquifer Protection District.
 - a. Soil boring was performed at the request of the zoning officer to verify the location of the aquifer in relation to this project. It is the opinion of the engineer that the aquifer materials map is substantiated by the borings performed.
4. It should be noted that this proposal is not to a scale large enough to require a State General Permit from SDDENR; however it is within the scope of the Board to ask for a certificate of compliance for this operation. The following assumes the Board will require such certificate.
5. The Board shall consider the following in determining whether the proposed CAFO will create a significant contribution of pollution:
 - a. Adding a review for certificate of compliance by SDDENR would ensure that DENR, the authority on water pollution, reviews the plans for compliance.
 - b. Size of feeding operation and amount of manure reaching waters of the state
 - 1) At its meeting on August 28, 2017; the Board heard from SDDENR – Feedlot permitting that they have had no pollution issues with deep pit barns.
 - 2) All manure from will be stored under roof and only removed when being pumped and injected
 - c. Location of feeding operation in relation to waters of the state
 - 1) The proposed finishing barn will be located ~5,600' from the nearest USGS Blue Line.
 - d. Means of conveyance of manure and process wastewater into waters of the state
 - 1) A drainage way just south of the proposed barn does drain straight west to the blue line.
 - 2) The barn is on a flat area, but the property slopes toward the drainage way to the south/southwest (150' at its nearest point.)
 - e. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the state.
 - 1) See "a" "c" and "d" above.
 - 2) Between proposed barns and waterway the land is used for crops.
6. A nutrient management plan is required.
 - a. Nutrient management plan has been prepared and submitted.
 - b. Fields in the nutrient management plan are expected to change (per the applicant and based upon the zoning ordinance.)

- c. The engineer certifies that the land currently used for spreading is sufficient for spreading the manure generated.
- 7. A manure management plan is required
 - a. The applicant prepared the manure management plan. It included:
 - 1) A site plan
 - 2) Operation procedures and maintenance of manure facilities for existing and proposed facilities.
 - 3) Verified that no containment is intended to store waste for more than two years
 - 4) Final as-built plans will be submitted to the zoning office if they change.
 - 5) Manure containment is designed for greater than 270 days storage.
 - 6) Plans specify manure will not be stored more than 2 years.
 - 7) Plans specify records on manure application will be kept and document that acceptable manure and nutrient management practices have been followed.
- 8. A Management plan for fly and odor control.
 - a. Completed –
 - 1) Operational plans for manure collection storage, treatment have been developed
 - 2) Applicant will contract with a rendering service for death loss or have a compost site.
 - 3) No trees are proposed around this facility.
 - 4) There is no outdoor manure storage
 - 5) Manure from the barn is entirely contained indoors.
 - 6) It is the intent to avoid spreading manure on weekends, holidays, and evenings on warm days.
 - 7) It is the intent to avoid spreading on calm and humid days as suggested by ordinance.
 - 8) Manure will be transported by hose and injected.
- 9. The site is greater than suggested separation distances for Churches, businesses, commercially zoned areas, Town Districts, Incorporated municipalities, private wells other than the operator's, lakes and streams classified as fisheries, and established residences.
- 10. The barn meets the minimum setbacks from rights-of-way.
- 11. The Board has historically accepted proposed setbacks of facilities where they can meet suggested minimums or variances have been issued.
- 12. Review of Specifications and nutrient management plan by DENR.
 - a. Applicant is not required by ordinance though may be required by the Board to have the nutrient management plan reviewed by DENR for a Certificate of Compliance. DENR does not review or inspect sites as follow up in these cases where a state permit is not required.
- 13. The zoning office does not have a record of any complaints against the Zemlicka operation.
- 14. All information required of the applicant in Section 5.14.9 was provided.
- 15. Information on soils, shallow aquifers, wellhead protection areas and floodplain (provided)
- 16. Zoning Officer notified Germantown and Rauville townships of the request.
- 17. Zoning Officer notified Clark Rural Water director of the request.

Staff Recommendation

Conditional Use Permit – **Class 3 CAFO**: The Board may table the request, deny the request or approve the request. If approved, the staff recommends, at a minimum, the following conditions:

- 14. The proposed barn will be constructed to provide manure containment for 2,400 finisher swine (960 animal units).

15. The applicant shall make application for a "Certificate of Compliance" from SDDENR prior to the issuance of any building permit(s) for the proposed site. The applicant shall not stock the site until providing documentation to the office of receipt of a Certificate of Compliance and/or demonstrating that any changes required as a result of the Certificate of Compliance have been implemented.
16. The applicant agrees to comply with the submitted nutrient management plan, fly and odor management plan, and manure management plan.
17. Applicant shall provide updated information regarding fields included in the nutrient management plans upon request by the Zoning Officer.
18. This Conditional Use Permit authorizes the use of this property for a Concentrated Animal Feeding Operation (nursery and feeder swine) consisting of 960 animal units. Any expansion beyond 960 animal units will require a new conditional use permit and the review of the site by SDDENR for compliance with the State General Permit requirements.
19. Haul road agreements with Rauville or Germantown Townships shall be provided for the use of 160th Street primary haul routes. Unless otherwise agreed to between the township and the applicant, Codrington County requires the Grantor to abide by the following terms to be included in the Agreements:
 - h. Unless otherwise agreed upon between the grantor and Rauville or Germantown Townships, the grantor shall be responsible for any costs associated with extraordinary maintenance and graveling on the portion of 160th Street used for the hauling of manure, feed, etc. for the operation, which are hereby designated as the primary haul roads, and
 - i. Unless otherwise agreed upon between the grantor and Rauville or Germantown Townships, all road work whether customary or extraordinary shall be done under the authority and supervision of the Township and meet its specifications. The work shall be done through the applicable contractor unless the Grantor receives prior authorization from the applicable road authority to conduct its own repairs or maintenance.
 - j. Rauville or Germantown Townships shall be responsible for all ordinary snow removal on 160th Street on the same basis as provided to the remainder of the Township. Any additional snow removal deemed necessary for the Grantor to continue its operations is hereby authorized to be done at Grantor's expense.
 - k. The Grantor acknowledges that, to the extent already provided for by the law, and further acknowledges that it shall be responsible for any and all damages to applicable road authority roads or road right-of-ways due to the result of the Grantor's operations (i.e. Delivery of feed, silage chopping or manure disposal). Work will be done on the same basis as specified hereinabove. However, no unique standard or obligation not otherwise provided for by law is created by this acknowledgment.
 - l. The Grantor may have an Agreement with a contractor for cutting silage or forage, or for hauling manure and shall notify the Townships in advance of manure hauling or chopping by listing the roads that will be traveled.
 - m. Unless otherwise agreed upon by the applicable road authority, the applicant shall notify and/or obtain any appropriate licenses prior to the laying of any pipes intended to transport liquid manure within the applicable right-of-way.
 - n. The Township and applicant may review and assign new haul routes on an annual basis.
20. In the event the haul road agreements hereinbefore described are not executed, the grantor, his heirs, assigns or successors in interest of the Grantor agree that all of the terms and conditions of Item "6" are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-

- described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of Item “6”.
21. The Grantor shall comply with established minimum manure application setbacks when spreading manure generated from the CAFO.
 22. The conditional use shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are adhered to.
 23. The Conditional Use Permit is transferable. Subsequent owners/operators will be required to agree to the terms of this permit.
 24. If there are 1) Violations of the Conditional Use Permit or other Codington County Zoning regulations or 2) Failure of the manure containment system, the applicant may be required to forfeit the Conditional Use Permit.
 25. Violation of the terms of this conditional use permit will be determined by the Codington County Zoning Officer.
 - (4) The first violation substantiated by the Zoning Officer of this conditional use permit may result in a notification letter stating the violation and a prescribed period of time to remove the violation. A second violation occurring within one calendar year of the previous violation may result in a review of the validity of the conditional use permit and potential revocation of said permit. A third violation within one calendar year of the initial violation may result in revocation of the conditional use permit and cessation of all feeder operations within forty-five days (45) of notice of revocation.
 - (5) The applicant may make appeal from the decision of the Zoning Officer or other agent of the Codington County Board of Adjustment to the Codington County Board of Adjustment. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Board of Adjustment shall be taken to Circuit Court.
 - (6) Failure to comply with the decision of the Zoning Officer or other agent of the Codington County Board of Adjustment may be deemed a separate violation.
 26. All of the terms and conditions herein shall extend to and be binding upon the heirs, assigns, or successors in interest of the Grantor, and are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement which shall, upon its execution, be recorded with the Codington County Register of Deeds Office.

CODINGTON COUNTY PLANNING COMMISSION

ISSUE #1 Plat

Property Owner/Applicant: Marvin and Maxine Czech

Action Item – Recommendation of approval of a plat.

Request: Plat property formerly known as a portion of the Northeast Quarter Lying North and East of Former Railroad Right-of-way, less Lot H1 and former railroad right-of-way in the North half of the Northeast Quarter in Section 15-116-52 into ***Czech Third Addition in the NE1/4 of Section 15-T116N-R52W of the 5th P.M., Codington County, South Dakota.***

ISSUE #2 Plat

Property Owner/Applicant: James and Marlys Mercie

Action Item – Recommendation of approval of a plat.

Request: Plat property formerly known as a portion of the Northeast Quarter Lying North and East of Former Railroad Right-of-way, less Lot H1 in the Northeast Quarter in Section 15-116-52 into ***James and Marlys Mercie Addition in the NE1/4 of Section 15-T116N-R52W of the 5th P.M., Codington County, South Dakota.***

ISSUE #3 Ordinance Amendment

Initiated by Planning Commission

Action Item – Recommendation of approval of Ordinance Amending the Zoning Ordinance:

Summary: This is the version of Article IV Administration, as discussed by the Planning Commission during a work session in January. It implements changes dictated by state law and updates the ordinance to be more consistent with policies of Board decisions, administration, and the Comprehensive Land Use Plan.

Ordinance #67

AN ORDINANCE ENTITLED, AN ORDINANCE AMENDING ARTICLE IV ADMINISTRATION OF ORDINANCE 65 AN ORDINANCE AMENDING ORDINANCE #15 AN ORDINANCE ESTABLISHING COMPREHENSIVE ZONING REGULATIONS FOR CODINGTON COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, PURSUANT TO SDCL 11-2, 1967, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND/OR ORDINANCES IN CONFLICT HEREWITH.